THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, 7th day of September,2007

W.P.No.21807 of 2005

Between:-

Gurram Ganga Reddy … Petitioner

and

Sollu Mallaiah and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.21807 of 2005

ORDER:

This Writ Petition is filed challenging the Order dated 13-9-2005 passed in Case No. W.C.149 of 1999 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Karimnagar-2nd respondent herein.

It appears, the 1st respondent filed an application under Section 22 of the Workmen's Compensation Act,1923 (for short 'the Act') before the 2nd respondent herein, which was numbered as W.C. Case 149 of 1999. After filing the counter by the petitioner herein and after hearing the parties, 2nd respondent passed an Order directing petitioner herein to deposit a total sum of Rs.45,583/- along with interest by way of a Demand Draft drawn on any Nationalized Bank or equivalent Bank in favour of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour Warangal, within 30 days from the date of receipt of the Order, for the permanent disability suffered by the 1st respondent herein, in the course of employment with the petitioner herein. According to the petitioner, he paid the entire amount as ordered by the 2nd respondent herein with simple interest at 9% per annum for the period from 20-3-1997 i.e. the date of accident to the date of the said Order i.e. 20-6-1997 along with costs of Rs.3,000/-. In the said Order dated 20-6-2007, the petitioner

herein was directed to deposit the said amount within a period of 30 days from the date of receipt of the Order. The said Order was received by the petitioner on 21-7-2003. As the petitioner failed to comply with the said Order, the Deputy Commissioner of Labour, Warangal was requested vide letter dated 29-10-2003 to execute the said Order. Meanwhile, a full satisfaction memo was received by post by the Assistant Commissioner of Labour, Karimnagar. On request of the Assistant Commissioner of Labour, for transmission of the case file to deal with full satisfaction memo, the Deputy Commissioner of Labour, Warangal informed vide letter dated 1-2-2005 that the counsel for the 1st respondent herein filed an execution petition and wanted to clarify the matter. In view of the discrepancy, the Full Satisfaction memo has been taken up for enquiry to ascertain its veracity and on the evidence of both the parties and on hearing the arguments of both the parties on the full satisfaction memo, the Assistant Commissioner of Labour, Karimnagar passed an Order dated 13.9.2005 holding that the petitioner could not establish that any amount was paid to the 1st respondent herein towards the amount alleged to have been compromised between the parties in pursuance of the Order dated 20.6.2003 of the Commissioner for Workmen's Compensation and, therefore, the petitioner was directed to comply with the said Order dated 20.6.2003 in W.C.Case No.149 of 1999. Aggrieved by the same, the present Writ Petition is filed.

The only ground raised by the learned counsel for the petitioner is that the Assistant Commissioner of Labour, Karimnagar (Commissioner for Workmen's Compensation) has no jurisdiction to examine and take up execution of the Order passed on 20-6-2003 in W.C.No.149 of 1999. Once an Order is passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour,

Karimnagar, it is for the Deputy Commissioner of Labour, Warangal to take up the E.P. and examine the same. In this case, no such enquiry was made. In fact, there was a full satisfaction memo filed by the 1st respondent on 12-8-2004 itself. The Assistant Commissioner of Labour, Karimnagar has no jurisdiction to enquire into the genuineness or otherwise of the compromise memo filed by the parties as to the full satisfaction. It is for the Deputy Commissioner of Labour, Warnagal to examine that aspect. On the letter dated 1-2-2005 addressed by the Deputy Commissioner of Labour, Warangal informing as to the discrepancies, the 2nd respondent has taken up an elaborate enquiry and passed the impugned Order, which is without jurisdiction and unsustainable in law.

Respondent No.1 filed a detailed counter affidavit denying the allegations made by the petitioner and stating that he never entered into any compromise with the petitioner. His counsel, who appeared in W.C. Case No.149 of 1999 appears to have colluded with the petitioner herein and wanted him to accept a settlement out of Court. He refused and engaged another counsel to move an application for execution of the Order. Respondent No.1 does not know how the writ petitioner got hold of blank papers signed by him to write up the so-called settlement deed and all that he can say is that such signed papers were available with the previous counsel. Under those circumstances, the petitioner has questioned the propriety of the 2nd respondent's action in taking up the so-called full satisfaction memo at its face value and proceeding with the enquiry into the correctness or otherwise of the settlement. Execution under the Workmen's Compensation Act is governed by the provisions of Section 31 thereof. Any Commissioner under the Act can execute any order, whether passed by himself or any other Commissioner under the Act.

Though it is the 2nd respondent, who passed the Order in W.C.No.149 of 1999, the 3rd respondent is as competent as the 2nd respondent and *vice versa* to execute the same. Thus, there is no impropriety in asking the 3rd respondent to execute it or in the 3rd respondent in transferring it to the 2nd respondent to do the same. Every executing authority has power to enquire into any issue arising in the execution. Such a power necessarily inherent in it for the effective performance of its duty. Respondent No.2 rightly exercised its jurisdiction. Section 28 of the Act deals with the instances where the amount payable is settled by agreement between employer and employee. It applies to settlements arrived at *de hors* adjudication by the Commissioner and also a settlement arrived at in modification of the compensation ordered upon enquiry and adjudication. The said Section specifically requires that the Commissioner must satisfy himself as to the genuineness of the agreement and empowers him to refuse to record a memo that he believes to be not *bona fide.* Unless some gross illegality or irregularity is made out, this Court cannot issue a writ of certiorari in a matter of this nature.

Heard both sides.

Learned counsel for the petitioner strongly placed reliance on a Circular Memo No.G1/26090/97, dated 6-10-1998 of the Commissioner of Labour, Andhra Pradesh, Hyderabad, whereunder all Deputy Commissioners of Labour were requested to initiate action to recover the arrears from the employers who failed to pay the amount to workers ordered under different labour laws. The procedure prescribed under Section 8 of the A.P. Revenue Recovery Act,1864 should be strictly followed while seizure and sale of movable property of the defaulters and also the other procedure as prescribed under the

said Act. In the said circular, G.O.Ms.No.396, Revenue (L.R.) Department, dated 9-5-1994 was referred to, whereunder the following instructions were issued:

> "After careful examination of the proposal, the Government consider that there is a need to delegate the functions of the Collectors under Section 5 of the Andhra Pradesh Revenue Recovery Act,1864 and to invest the powers of Tahsildar under Section 7 of the Andhra Pradesh Rent and Revenue Sales Act,1839 to the Officer of Labour Department (Deputy Commissioner and above) in respect of distraint and sale of movable properties of the defaulting employers so as to recover arrears due to the employees under several Laws.
>
> All the District Collectors shall take necessary action accordingly to delegate the powers under Section 5 of the Andhra Pradesh Revenue Recovery Act,1864 authorizing Officers of Labour Department of the rank of Deputy Commissioner and above for the purpose of recovery of arrears due to the Labour Department by the destraint and sale of movable properties of the defaulting employers of factories and establishments failing under labour laws."

The Circular and the G.O. referred to above relate to appointment of an executing authority and for recovery to be made under the A.P. Revenue Recovery Act,1864. Of course, an Officer not below the rank of a Deputy Commissioner of Labour was directed to be appointed as Recovery Officer. Thus, it is the Deputy Commissioner of Labour before whom an application for execution is maintainable.

But, the question remains as to whether, in the present case, the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Karimnagar has assumed the role of an executing authority for recovery of the amounts under the Revenue Recovery Act ? The simple and straight answer seems to be 'no'. When a dispute arose as to the correctness of the alleged settlement entered into between the parties, the Deputy Commissioner of Labour-3rd respondent herein addressed a letter to the 2nd respondent-

Assistant Commissioner to enquire into the truth or otherwise of such settlement. The 2nd respondent, after hearing both the parties, passed an elaborate order holding that the petitioner/opposite party could not establish that any amount was paid by it to the applicant/workman towards the amount alleged to have been compromised between the parties following the Order dated 20-6-2003 passed in W.C.No.149 of 1999. Therefore, the petitioner was directed to comply with the said Order dated 20-6-2003. I am of the opinion that the impugned Order is not passed in the capacity of an executing authority. It was only passed after an enquiry conducted by the 2nd respondent on the directions of the 3rd respondent. The notice and enquiry conducted by the 2nd respondent was not as required under the A.P. Revenue Recovery Act. Therefore, it cannot be said to be execution proceedings as contemplated under the Workmen's Compensation Act read with A.P. Revenue Recovery Act. Further, on a perusal of the said Order, it is very clear that the purported receipt executed by the 1st respondent does not contain any details. Respondent No.1 herein denied signing of any full satisfaction memo. There was no clarity in the said Memo as to what exactly the amount was paid to the 1st respondent towards full and final settlement of the order dated 20-6-2003 passed in W.C.No.149 of 1999. It was simply stated that the total amount ordered was paid. This itself shows that this is not correct, since such a compromise would be only for lesser amount than what was ordered or was only a manipulated one. Under those circumstances, I am of the opinion that the 2nd respondent has not committed any error calling for interference of this Court. It is always open for the 1st respondent to file a fresh execution petition before the Deputy Commissioner of Labour at Warangal and get the Order

dated 20-6-2003 made in W.C.No.149 of 1999 executed, if not already filed. The Writ Petition is devoid of any merit and is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

07-9-2007

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